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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,273	12/14/2001	Lirio Quintero	154-26969-US	3997
23770	7590	10/02/2003	EXAMINER	
PAULA D. MORRIS & ASSOCIATES, P.C. 10260 WESTHEIMER, SUITE 360 HOUSTON, TX 77042			TUCKER, PHILIP C	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/023,273

Applicant(s)

QUINTERO, LIRIO

Examiner

Philip C Tucker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 196-412 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 329-364, 370-380 and 385-391 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) See Continuation Sheet is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims rejected are 196-220,223,224,229-233,235-264,267,272-275,277-280,282,283,285-287,289,292,293,295,296,298,299,301,303-306,309,310,313,316,317,323-328,364-369,381-384 and 392-412.

Continuation of Disposition of Claims: Claims objected to are 221,222,225-228,234,266-271,276,281,284,288-291,294,297,300,307,308,312,314,315 and 318-322.

### DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 305, 306, 323-328, 365-369 and 381-384 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 305, the claim fails to tell what is reduced. In claim 306, there is no antecedent basis for "said reduced surface tension". Claims 323-328, 365-369 and 381-384 all contain trademark names. Claim 323-328, 365-369, 381-384 contains the trademark/trade name XANPLEX and BIOLOSE. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe polymers and, accordingly, the identification/description is indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 196-219, 223, 224, 229-233, 235-240, 245-264, 267, 272-275, 277-280, 282, 283, 285-287, 292, 293, 295, 296, 298, 299, 301, 303-306, 309, 310, 313, 316, 317, 392-412 are rejected under 35 U.S.C. 102(b) as being anticipated by Blanco et al (5783525).

Blanco teaches an oil in water well servicing fluid which may be used for drilling, having a density within the scope of the present invention, which comprises a starch, xanthan and surfactants within the scope of the present invention (see example 6 and claims). Such would inherently possess viscosity and surface tension within the scope of the present invention.

5. Claims 196-200, 210-220, 223, 224, 229, 230, 235-239, 241-245, 247, 249, 251, 252, 254, 255, 257, 258, 260-264, 267, 272, 277-278, 282, 285, 289, 292, 295, 296, 298, 301, 303, 305, 309, 310, 313, 316 and 402-412 are rejected under 35 U.S.C. 102(b) as being anticipated by House (5977030).

House teaches a water in oil fluid which is used as a drilling fluid which comprises an oligosaccharide surfactant and a xanthan polymer (see the examples). Fluids such as olefins and polyalphaolefins may be used as the internal phase, upto a

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level of about 30% (see column 3, lines 20-26 and example 1). Such would inherently possess fluid loss and surface tension within the scope of the present invention.

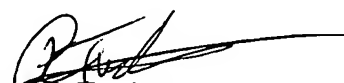
6. Claims 221, 222, 225-228, 234, 266-271, 276, 281, 284, 288-291, 294, 297, 300, 307, 308, 312, 314, 315 and 318-322 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 329-364, 370-380 and 385-391 are allowable over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Tucker whose telephone number is 703-308-0529. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson can be reached on 703-308-2340. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

  
Philip C Tucker  
Primary Examiner  
Art Unit 1712

PCT-2877